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2-213-8 ALLEGATIONS MADE BY INDIVIDUALS OUTSIDE THE BUREAU

(1) In instances in which allegations are made by persons outside the Bureau against Bureau personnel or the Bureau itself and such charges are disproven, prompt action should be taken to refute such claims both with the source of the erroneous complaints and others having knowledge of the allegations, including news media carrying stories on the matter. Where possible, every effort should be made to have the refutation appear in the same article with the charges. Whenever the advisability of taking this action appears questionable, FBIHQ should be advised and a recommendation made on this point setting out clearly the reasons on which the conclusion is based.

(2) If allegations are made against Bureau personnel by subjects of Bureau cases during a court trial, it is the responsibility of the SAC with the concurrence of the USA and/or DOJ, to see that proper refutation is made and that such refutation appears in court records in accordance with the Manual of Investigative Operations and Guidelines, Part II, Section 6. The purpose of this is to insure that in case of an appeal the Bureau's refutation is in the court's record. FBIHQ is to be advised promptly of all pertinent facts and circumstances relating to such allegations and refutations.

13-9 SUSPENSION WITHOUT PAY

(1) No Bureau employees are to be suspended without pay without prior FBIHQ approval. Where the seriousness of the situation warrants, the Assistant Director of the Administrative Services Division may be contacted telephonically. His instructions regarding suspension without pay or other immediate action to be taken pending a final determination of the matter may be secured.

(2) In cases involving disciplinary suspension without pay for seven or more consecutive calendar days, SF-8 will be sent to the employee by Personnel Section, FBIHQ, as an enclosure with the letter addressed to employee containing suspension notification. However, when telephonic or teletype instructions are issued by FBIHQ suspending the employee for seven or more consecutive calendar days, instructions will be issued

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and recorded that SF-8 be furnished. When SACs and division heads receive these instructions, a dated notation that form was sent should be made in the remarks column on the time and attendance card.

(3) Employees who are under suspension without pay cannot legally be permitted to work during the period of suspension. If employees offer to work while under suspension, they should be informed it is illegal. FBIHQ decision in such instances is unnecessary, although FBIHQ should be informed of the employee's attitude in making the offer.

13-10 VETERANS' PREFERENCE ACT

(1) When an employee is a veteran and has completed the one-year probationary period in the Bureau, the employee is entitled under the Veterans' Preference Act to receive 30 days' advance written notice of proposed involuntary separation, involuntary reduction in grade or pay, or suspension without pay exceeding 14 days. The notice must state the reasons and the veteran must be given an opportunity to answer. During the period of advance written notice, the employee may be retained on active duty, be placed on annual leave or leave without pay with employee's consent, or be suspended without pay (such suspension cannot exceed [14] days in length). In any case in which there is reasonable cause to believe the employee guilty of a crime punishable by imprisonment, the advance written notice may be reduced to whatever length of time is reasonable but not less than seven days.

(2) If on active duty status, the employee must be given a reasonable amount of time to prepare an answer. The material on which the Bureau relies in proposing the adverse action must be made available to the veteran for review in connection with preparation of an answer.

(3) Upon receiving the employee's answer to the notice of proposed disciplinary action, FBIHQ will consider it and advise the employee in writing of its final decision. If this decision is adverse to employee, the employee has a right to appeal it to the appropriate regional office of the Merit Systems Protection Board. This right lasts for 15 calendar days after the effective date of the disciplinary action.

(4) Any necessary notices to employees required by the Veterans' Preference Act will be handled by FBIHQ.

13-11 RESIGNATION TENDERED DURING PERSONNEL ACTION INQUIRY

(1) It may be that an employee would rather submit his/her resignation than see the inquiry continue and face possible charges. Division heads, SACs and other supervisory employees may, upon conclusion of their findings, discuss with the employee what the intended recommendation to FBIHQ will be with respect to administrative action, being careful to point out at the same time that any formal action or charges will be made at FBIHQ. Accordingly, it is permissible to discuss the possibility of resignation with the employee. Duress, deception, intimidation or anything similar will not be tolerated and must not be used to influence employee's decision nor may employee be denied adequate time, if requested, to make a decision between resigning or seeing the inquiry continued. Employee should be advised of the Bureau's procedures for employee discipline and that these procedures allow an employee the opportunity to rebut negative allegations and recommendations of his/her supervisors. Employee should also be advised that a voluntary resignation might preclude him/her from receiving unemployment compensation he/she may otherwise be entitled to.

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(2) Should an employee involved in allegations submit his or her resignation from the Bureau's service, such resignation should be received and forwarded to FBIHQ.

13-12 SCHEDULE OF DISCIPLINARY OFFENSES AND PENALTIES FOR FBI EMPLOYEES

(1) This schedule is to be used only as a guide in determining appropriate discipline based on the violation of regulations by Bureau employees. This schedule is not all inclusive, and final determination of the appropriate disciplinary action warranted in each case will be made by FBIHQ. It should be noted that the decision-making process utilized in determining appropriate action in disciplinary matters is extensive in nature and involves input from every level of management in FBIHQ. In addition, consideration is given to Bureau policy and similar incidents previously resolved, as well as any aggravating or mitigating circumstances of the case in point. In some instances, discussions are held with the Department of Justice and the Office of Personnel Management before a final determination is made. In most instances, penalties for violations of regulations will fall within the range of penalties set forth in this schedule. In aggravated case, a penalty outside the range of penalties may be imposed. For example, supervisors and Bureau officials, because of their responsibility to demonstrate exemplary behavior, may be subject to a greater penalty than is provided in the range of penalties. The purpose of this schedule is not to remove the personnel management decisions made in all disciplinary matters but rather to provide an example and guide which is used at FBIHQ in connection with decisions made in regard to disciplinary matters.

(2) In regard to suspensions, it is noted that the Civil Service Reform Act (CSRA) of 1978 provides that days of suspension will be computed in terms of calendar days, not days worked. Therefore, recommendations for a period of suspension will only be made in terms of calendar days. A period of suspension will always commence at the close of business, Friday of any given week. For example, recommendation of seven (7) days' suspension, if approved, will result in a forfeiture of five days' pay whereas a recommendation of fourteen (14) days' suspension will result in a forfeiture of ten days' pay. A period of suspension in excess of 14 calendar days is an adverse action as [defined in the CSRA of 1978 (see 13-10 of this section for details).

(3) For the purpose of definition, an "adverse action" is where an employee is reduced in grade or pay, suspended for more than 14 days or dismissed. All employees may appeal disciplinary action to the Director of [the FBI[to be received at FBIHQ within 30 calendar days after the effective [date of the disciplinary action.] Thereafter, nonveteran employees in the FBI, an excepted service, do not have a right of appeal of a disciplinary action to the Merit Systems Protection Board. However, they may file an action in court. In conformance with the provisions of the Veterans' Preference Act of 1944, a veteran, following final action on an appeal to the Director of the FBI, may appeal an adverse action to the Merit Systems Protection Board and, thereafter, may file an action in court.

(4) The following definitions are furnished for information. This schedule does not include discipline required by law or infractions which, in addition to being a violation of Bureau rules and regulations, are also a criminal offense.

(a) Oral reprimand--Employees are advised of deficiency or infraction of regulations and notation made in personnel file relating to the need for the official reprimand.

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(b) Commented upon in annual performance rating--In this instance, the infraction warranted more than an oral reprimand but is not considered severe enough for official recognition in the form of a letter of censure. This refers to work-related matters only.

(c) Censure--Official written reprimand.

(d) Censure and probation--Official written reprimand which includes a minimum probationary period of 90 days for Special Agents and 60 days for other employees.

(e) Censure, probation and suspension--Official written reprimand which, in addition to a probationary period, includes a period of time in which the employee is removed from duty without pay.

(f) Demotion--Any reduction in grade or pay.

(g) Removal--Dropped from the rolls of the FBI.

(5) The standards by which all employees are held are set forth in greater detail in this manual. For further reference, these standards of conduct can be found in the Department of Justice Order 350-65 captioned "Standards of Conduct."

(6) An employee may be censured when the cause for administrative action is sufficiently aggravated as to require a written reprimand. At the time FBIHQ makes a promotional decision, all relevant information including the cause for a disciplinary matter, including probation, is considered. FBIHQ expects the employee's superior to provide a strong favorable recommendation when the employee has been the subject of disciplinary action within the preceding 12 months. Lacking such a recommendation, FBIHQ may determine that a promotion from one GS or Wage level to another should be delayed for a period of up to 60 days for support employees or up to 90 days for Agents.

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13-13 DISCIPLINARY PROBATION

Disciplinary probation is a corrective and/or punitive procedure (which may be imposed with censure and/or suspension when so dictated by the factual situation) to closely monitor an employee's performance with intent to provide counsel and correction during a specified period of time. During the disciplinary probation period, a denial of certain employee benefits may be imposed.

13-13.1 Purpose of Disciplinary Probation

To provide the employee with notice that the particular area of inefficiency, delinquency, or poor judgment, etc., will be afforded close scrutiny for a specified period of time. During the period of disciplinary probation, the employee is expected to make a concerted effort to improve in the deficient area.

13-13.2 Length of Disciplinary Probation

The length of the disciplinary probation period is flexible and [will be determined by the Director or [Director's] delegated representative. In most cases the original disciplinary probation period will be 90 days for Special Agents and 60 days for support employees. Removal from probation must be approved by the official who placed the employee on probation or by a higher Bureau authority.

13-13.3 Effects of Disciplinary Probation on Employee

During the period of disciplinary probation an employee:

- (1) Will not be promoted from one GS or Wage Board level to another;
- (2) Will not be considered for advancement within the Career Development Programs of the Bureau;
- (3) Will not be considered for an Office of Preference Transfer;
- (4) May have a promotion delayed for a period of time not to exceed the period of disciplinary probation if the action occurred during the preceding 12 months and has not been offset by a strong favorable recommendation for promotion from the employee's superior. The final determination will be made by the Personnel Officer at FBIHQ.

13-13.4 Application of Disciplinary Probation

An employee will be placed on disciplinary probation only when the cause for administrative action is work performance related or work-related.

- (1) Work performance considers the technical competence aspect of an employee.
- (2) Work-related action involves judgment, common sense, and the impact the cause has on the public's perception of the FBI.